HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 27031 OF 1996

DATED: 14.2.2007

Between:

J. Chinna Rao

… Petitioner

and

The Deputy General Manager, Canara Bank,
Circle Office, Hyderabad and others

… Respondents

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No.27031 of 1996

ORAL ORDER:

In March 1977, the petitioner entered the service of the Canara Bank as a Peon. He was promoted as a Clerk in 1982 and while so working at the Gandhinagar Branch, Vijayawada, was placed under suspension by an order dated 3.1.1991. The petitioner was placed under suspension on the ground that disciplinary proceedings were contemplated against him for certain alleged acts of misconduct.

On 27.5.1991, the petitioner was issued a charge sheet, alleging that while working in the D.Ds issue and paid department at the Gandhinagar Branch during December 1989 to August 1990, the specified demand draft leaves were missing and he failed to report the missing DD leaves, except one; of the missing DD leaves, the specified leaves were used for drawing DDs favouring certain individuals named in the charge sheet, which were then encashed to fictitious accounts in the names of the payees, opened at several other branches of the bank. The petitioner was thus generically charged of indulging in fraudulent conduct inconsistent with the integrity required of an officer of a bank and as a consequence of such conduct defrauding the bank in a total amount of Rs.2,79,900/- (thus far detected). It was also alleged that a portion of the amount so obtained

by the petitioner was utilized for discharging huge debts incurred by the him.

In respect of substantially the same transaction, the petitioner was also prosecuted, for offences under Section 409 and 420 of the Indian Penal Code in C.C.No.343 of 1992. The court of the learned III Metropolitan Magistrate, Vijayawada by the judgment dated 24.1.1994, on a conclusion that the prosecution had failed to prove its case against the petitioner (A-3) beyond reasonable doubt, acquitted the petitioner and 2 others.

After a due process of domestic inquiry, by the order dated 31.3.1994, the disciplinary authority-the 1st respondent herein, exercising power under Regulation 4 (g) in Chapter XI of the Canara Bank Service Code (for short 'the Code') imposed the punishment of dismissal on the petitioner, for detailed reasons recorded. This order was passed by the disciplinary authority on the basis of an inquiry officer's report, which held the petitioner guilty of the charges leveled and a conclusion that the petitioner had committed grave misconduct. It requires to be noticed that the report of the inquiry officer was communicated to the petitioner, calling for his objections or representations if any. This was on 15.2.1994. The petitioner also offered his explanation on 9.3.1994. It was only thereafter and considering the entire record that the disciplinary authority imposed a punishment of dismissal by the order dated 31.3.1994.

Against the above order, the petitioner preferred an appeal to the 2nd respondent on 28.5.1994. The 2nd respondent rejected the appeal by the order dated 8.8.1994. Against the rejection of the appeal, the petitioner states to have preferred a representation to the 3rd respondent but under no provision for such representation. There is however no response from the 3rd respondent, is the complaint. The petitioner is thus before this court, seeking Certiorari against the order

of the primary authority-the 1st respondent dated 31.3.1994, visiting the petitioner with the penalty of dismissal from service.

In the disciplinary inquiry, on behalf of the bank 10 witnesses were examined and 23 documents marked; on behalf of the petitioner-the charged officer, five (5) documents were marked. The petitioner was assisted by a defence representative to a certain stage in the inquiry proceedings; thereafter he declined to assist the petitioner. Thereafter, the inquiry was adjourned on several dates as recorded in the inquiry report despite the failure of the petitioner to participate in the proceedings on the several dates of adjournment. Eventually, the inquiry was concluded on 23.2.1993

After conclusion of the inquiry, on behalf of the management, a written brief of the case was submitted on 11.6.1993. Thereafter, several opportunities were afforded to the petitioner to lodge his written submissions and as there was no response by the petitioner, eventually and after waiting for considerable time, the inquiry officer submitted his report.

From the report of the inquiry officer, it is clear that ample and adequate opportunity was provided at every relevant stage of proceedings to the petitioner. On the basis of the evidence of ME-2, it was established that the specified DD leaves were not accounted for and were missing in the branch. This was corroborated by the oral testimony of MW-6. The testimony of MW-3 in conjunction with the documentary evidence in ME 15-A to ME 15-H legitimized the conclusion of the inquiry authority that the several DD sheets as per the DD Issue Register were authenticated by the petitioner. From this oral and documentary evidence, the inquiry officer concluded that the petitioner was present and working in the DDs Issue Department on the dates when the DDs were missing. MW-10 testified that on 29.3.1990, the petitioner brought to this witness's notice information as

to the missing of one DD leaf; but brought no other missing DD leaves to his notice. MW-10 also testified that the DD leaves could not go about missing without the knowledge of the petitioner. The inquiry authority on the basis of this oral and documentary evidence concluded that not only was the petitioner having access to and control over the DD leaves, but had failed to report about the missing of the DD leaves to the concerned, except in respect of one DD leaf bearing No.298400.

On the basis of adequate, cogent and reliable evidence chronicled in detail in the inquiry report by reference to the oral and documentary evidence, it was concluded that the missing DD leaves were utilized for drawing up fraudulent demand drafts, forging the signatures of the Manager and another officer of the branch. Thus, one DD leaf was employed for drawing up a demand draft for Rs.2,25,000/- ; another for drawing up a DD for Rs.9,900/-. The encashment of the amounts of the above fraudulently drawn up DDs by those fictitious persons in whose names accounts were created has also been established by evidence. The concerned officers had testified that they had not signed the DDs and that the branch had not issued the DDs. On the relevant dates on which the DDs were apparently drawn up, the Manager and the concerned officer whose signatures appear on DDs, were in fact on leave. An officer of the bank-MW6 testified in the inquiry that on referring the relevant records to the handwriting expert, it was opined that ME-8, a DD No.500795 dated 10.2.1990 drawn in favour of V. Balaramakrishnaiah for an amount of Rs.9,900/- was in fact written by the petitioner himself. MW-8-the handwriting expert in his testimony and in his report ME-16 on examination of the specimen signatures of the petitioner with the disputed signatures testified to the identity of the handwriting. On the basis of this evidence, the inquiry officer came to the conclusion that the petitioner had himself prepared a DD for Rs.9,900/- favouring one V.

Balaramakrishnaiah, a DD leaf which was amongst the missing leaves from the branch. There is also ample evidence on record, which preponderates the conclusion of the petitioner's complicity in the opening of fraudulent bank accounts which facilitated the encashment of the fraudulent DDs prepared out of the missing DD leaves.

Cogently analyzing this evidence independently apart from concurring with the report and conclusions of the inquiry officer, the disciplinary authority arrived at the guilt of the petitioner and concluded that there was complicity of the petitioner in the perpetration of the fraud on the bank and having regard to the gravity of misconduct and finding no mitigating circumstances in the past record of the petitioner, imposed the penalty of dismissal from service.

The learned counsel for the petitioner was at pains to urge that since there was no specific charge as to the petitioner's past conduct, such conduct ought not to have been taken into consideration. This is not a case where the conclusion of the petitioner's guilt has been arrived at on the basis of his past conduct. As is apparent from the order dated 31.3.1994, on an analysis of the material on record, the disciplinary authority came to the conclusion that the petitioner was guilty of the charges; that the charges were extremely grave and serious and that since there was nothing in the past record of the petitioner which might have contributed or suggested a mitigating circumstance, the punishment of dismissal was appropriate. The past conduct of the petitioner was only referred to for the purpose of the satisfaction as to whether there were mitigating circumstances which diminute the gravity of the misconduct which was otherwise established. In any event, purloining of DD leaves by an officer of a bank; failing to report the missing of the DD leaves; active participation in the drawing up of DDs on such leaves and assisting covertly or overtly in their encashment is certainly not exemplary conduct of a

bank employee which would justify a punishment lesser than dismissal.

On behalf of the petitioner, it is also contended that the entire proceedings are vitiated as the bank had failed to conduct a joint inquiry against the petitioner and 2 other officers, who were also arraigned for the same species of misconduct. This cannot be a ground for invalidating the disciplinary proceedings where all fair and ordained procedures were followed and there was ample and adequate oral and documentary evidence, ample by departmental inquiry standards to legitimize the conclusion of guilt on a preponderance of probabilities.

The principles regarding the scope of judicial review of disciplinary proceedings is too well settled to justify an idle parade of familiar authority.

In ***STATE BANK OF PATIALA V. S.K. SHARMA (1),*** a large volume of precedential authority was visited and the principles summarized in para (32) of the report as under:

> ***"(1) An order passed imposing a punishment on an employee consequent upon a disciplinary/departmental enquiry in violation of the rules/regulations/statutory provisions governing such enquiries should not be set aside automatically. The Court or the Tribunal should enquire whether (a) the provision violated is of a substantive nature or (b) whether it is procedural in character.***
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> ***(2) A substantive provision has normally to be complied with as explained hereinbefore and the theory of substantial compliance or the test of prejudice would not be applicable in such a case.***
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> ***(3) In the case of violation of a procedural provision, the position is this: procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held, or order passed. Except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of***

violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The Court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle.

(4) (a) In the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. Be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee.

(b) In the case of violation of a procedural provision, which is of a mandatory character, it has to be ascertained whether the provision is conceived in the interest of the person proceeded against or in public interest. If it is found to be the former, then it must be seen whether the delinquent officer has waived the said requirement, either expressly or by his conduct. If he is found to have waived if, then the order of punishment cannot be set aside on the ground of said violation. If, on the other hand, it is found that the delinquent officer/employee has not waived it or that the provision could not be waived by him, then the Court or Tribunal should make appropriate directions (include the setting aside of the order of

punishment), keeping in mind the approach adopted by the Constitution Bench in B. Karunakar, (1994 AIR SCW 1050). The ultimate test is always the same, viz., test of prejudice or the test of fair hearing, as it may be called.

(5) Where the enquiry is not governed by any rules/regulations/statutory provisions and the only obligation is to observe the principles of natural justice – or, for that matter, wherever such principles are held to be implied by the very nature and impact of the order/action – the Court or the Tribunal should make a distinction between a total violation of natural justice (rule of audi alteram partem) and violation of a facet of the said rule, as explained in the body of the judgment. In other words, a distinction must be made between "no opportunity" and no adequate opportunity, i.e., between "no notice"/ "no hearing" and "no fair hearing." (a) In the case of former, the order passed would undoubtedly be invalid (one may call it "void" or a nullity if one chooses to). In such cases, normally, liberty will be reserved for the Authority to take proceedings afresh according to law, i.e., in accordance with the said rule (audi alteram partem). (b) But in the latter case, the effect of violation (of a facet of the rule of audi alteram partem) has to be examined from the standpoint of prejudice; in other words, what the Court or Tribunal has to see is whether in the totality of the circumstances, the delinquent officer/employee did or did not have a fair hearing and the orders to be made shall depend upon the answer to the said query. (It is made clear that this principle (No.5) does not apply in the case of rule against bias, the test in which behalf are laid down elsewhere.)

(6) While applying the rule of audi alteram partem (the primary principle of natural justice) the Court/Tribunal/Authority must always bear in mind the ultimate and overriding objective underlying the said rule, viz., to ensure a fair hearing and to ensure that there is no failure of justice. It is this objective which should guide them in applying the rule to varying situations that arise before them.

(7) There may be situations where the interests of state or public interest may call for a curtailing of the rule of audi alteram partem. In such situations, the Court may have to balance public/State interest with the requirement of natural justice and arrive at an appropriate decision."

In ***UNION OF INDIA V. VISHWA MOHAN (2.)***, the Supreme

Court pointed out that in banking business, absolute devotion, diligence, integrity and honesty needs to be preserved by every bank employee and in particular a bank officer. If such conduct is not exhibited, the confidence of the public/depositors would be severely impaired.

Even an unauthorized absence for a period of 3 years by a bank officer was considered a grave misconduct and detrimental to public interest justifying dismissal from service, held the Supreme Court in ***GENERAL MANAGER, BANK OF INDIA V. MOHD. NIZAMUDDIN (3.)***.

In ***STATE BANK OF INDIA V. RAMESH DINKAR PUNDE (4.)***, the Supreme Court observed that a bank officer holds a position of trust where honesty and integrity are inbuilt requirements and any erosion of these qualities cannot be dealt with leniently. When a bank officer commits misconduct for his personal ends and against the interests of the bank and the depositors, he must be dealt with an iron hand, observed the court. Reliance was also placed in this judgment on an earlier judgment of the Apex Court in ***CHAIRMAN AND MD, UNITED COMMERCIAL BANK V. P.C. KAKKAR (5.)***, where the court observed that a bank officer is required to exercise higher standards of honesty and integrity as he deals with money of the depositors and the customers. Every officer or employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. It is further held that good conduct and discipline are inseparable from the functioning of every officer or employee of a bank. The very discipline of an organization, particularly a bank, is dependent upon each of its officers acting and operating within their allotted sphere.

In another but similar context in ***REGIONAL MANAGER,***

U.P.S.R.T.C. V. HOTI LAL (6.), the Apex Court pointed out that if a charged employee holds a position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently.

I n ***JANATHA BAZAR V. SECRETARY, SAHAKARI NOUKARARA SANGH (7.)***, the Supreme Court pointed out that in case of proven misappropriation, there is no question of considering the past record, as the misconduct concerned is a conduct of sufficient gravity in itself as to invite the severest of penalties.

In the light of the abundance of precedential authority and in the context of the fact that adequate, fair and reasonable opportunity was afforded to the petitioner and the conclusions in the domestic inquiry were arrived at on the basis of cogent and reliable evidence preponderating the conclusion of the petitioner's guilt, this court discerns no infirmity in the orders of the disciplinary authority as confirmed by the appellate authority. No case is made out for interference in judicial review. This court is not constituted as an appellate court. It is a court of judicial review. Even otherwise, neither on appellate scrutiny nor scrutiny on judicial review parameters, is any infirmity discernible in the proceedings impeached in this writ petition.

The writ petition is dismissed. There shall be no order as to costs.

GODA RAGHURAM, J

Date: 14.2.2007
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1. AIR 1996 SC 1669
2. (1998) 4 SCC 310
3. (2006) 7 SCC 410
4. (2006) 7 SCC 212
5. (2003) 4 SCC 364
6. (2003) 3 SCC 605
7. AIR 2000 SC 3129